

ET 03-92



UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and
Information Administration
Washington, D.C. 20230

Mr. Edmond J. Thomas
Chief, Office of Engineering Technology
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

NOV 5 2002

RECEIVED

JUL 18 2003

Federal Communications Commission
Office of the Secretary

Re: Bitronik, Inc. Petition For Reconsideration or Waiver (Reference No. 1300F2)

Dear Mr. Thomas:

The Office of Spectrum Management of the National Telecommunications and Information Administration (NTIA) reviewed the reference Petition for Consideration or Waiver.¹ In our opinion, Biotronik did not demonstrate good cause in the Petition to justify granting a Reconsideration or Waiver to operate the Philos Dr-t in the Medical Implant Communications Service (MICS). NTIA therefore recommends that a reconsideration or waiver of the current rules not be granted.

The issue is the Biotronik devices' capability to transmit a scheduled signal periodically, which we believe undermine the intent of the frequency pre-monitoring requirement of the MICS rules. This scheduled transmission as indicated by the Commission is not in full compliance with the MICS rules (Part 95).² In spite of Biotronik's plead in their Petition for Reconsideration or Waiver that the scheduled signal qualifies as a "medical event", thus should be exempted from the frequency pre-monitoring requirement. NTIA is not persuaded by the Petition that the automatic signal is not "geared merely to ensuring the proper and continued operation of the equipment" as had been previously determined by the Commission.³ Alternatively, Bitronik requested a Waiver, if it is found that the scheduled transmission of the Philos Dr-t is not within the MICS rules. Absence of some type of demonstration of hardship or adversity for complying with the rules, NTIA cannot support the request for a Waiver, either. Additionally, NTIA is concerned that if a Waiver is granted without a demonstration of hardship for complying with the rules, it could ultimately have an adverse impact to the primary Federal users of the spectrum.

In summary, NTIA found no additional information in the Biotronik Petition to justify granting Reconsideration or Waiver. NTIA believes that the Commission should enforce the earlier ruling that directed Biotronik to modify the Philos Dr-t by omitting the scheduled transmission feature before it can be allowed to operate in the MICS.⁴ If you have any questions regarding the above information, please contact me or Gerald Hurt at 202 482-4107.

Wentland Copies rec'd 2
WMA ADDS

Sincerely,

Fredrick R. Wentland
Acting, Associate Administrator

¹ BIOTRONIK, INC. Petition For Reconsideration or Waiver (FCC ID PG6BA0T, Ref. No. 1300F2).

² See letter, From Bruce A Franca, Deputy Chief, Office of Engineering & Technology, Federal Communications Commission to Mr. David E. Hillard, Wiley, Rein & Fielding and Mr. Mark Johnson, Biotronik, Inc, (3/8/2002).

³ *Id.*

⁴ *Id.*